

In transactions in which products of photoprocessing are sold in conjunction with other services, if a charge for the photoprocessing component is not separately stated, tax is imposed on 50% of the entire selling price unless the sale is made by a professional photographer, in which case tax shall be imposed on 10% of the entire selling price of the products of photoprocessing. See 86 Ill. Adm. Code 130.2000. (This is a GIL).

October 25, 2000

Dear Mr. Xxxxx:

This letter is in response to your letter dated July 12, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We have discussed this situation with the Retailers Occupation Tax advisors section but we would like to receive a letter ruling or other permissions to protect our clients from any misunderstandings that our firm may have concerning Retailers Occupation Tax for a Professional Photographer when paying and collecting tax on the photoprocessing costs as cited under Section 130.2000.

In discussing Section 130.2000(b)(3) with the advisors, we agreed that the code specifically spells out that photographers, whether they use in house photoprocessing, or use third-party photoprocessors, when presenting their customer with an invoice for services they must separately state a charge for photoprocessing costs sold in conjunction with all other services and then state the sales tax to be charged.

The truth is that our photography client's photoprocessing costs in relationship to the total bill are De Minimis in nature, being approximately 4% of the total bill. While it is obvious that the De Minimis rules do not apply to the photographers situations, and yet in the spirit of the rules of De Minimis personal property sales and the ability of drinking establishments and other similar businesses to post a visible statement that sales taxes are included in the cost of the drinks or property sold, we would like to do something like the two proposed sales invoice presentations below.

Example Invoice #1-package prices are stated without listing the breakdown of the cost of photoprocessing sold and simply stating that all sales taxes are included in the package price;

Sample Photo Promotion Advertisement

Package A = \$ 23.00

5 Photos 3 x 5
5 Photos 8 x 11

All Sales Tax is Included

OR

Example Invoice #2-package prices are stated alone and photoprocessing costs and sales taxes are stated below the headline advertisement in smaller print. Below is a typical invoice of our taxpayer which is printed on the face of a mailing envelope offering customers' several purchase package options to select from, requesting customer to fill in mailing address information and enclosure of check before mailing back to taxpayer.

XYZ PHOTOGRAPHY STUDIO, INC	
<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;">Package A = \$23.00 5 Photos 3 x 5 5 Photos 8 x 11</div>	<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;">Package B = \$46.00 5 Photos 3 x 5 5 Photos 8 x 11</div>
Name _____ Mailing Address _____ <input style="width: 50px; height: 20px;" type="text"/> _____ <input style="width: 50px; height: 20px;" type="text"/>	
Delivery charges of \$1.00 have been included in the package prices above. Photoprocessing costs of \$2.00 plus sales tax of \$.13 are included in Package A price Photoprocessing costs of \$4.00 Plus sales tax of \$.26 are included in Package B price	

Because several of the client's larger competitors are simply stating that sales taxes are included and they do not separately state any of the above it is tempting to follow suit with the competitors. However, the seriousness of this problem is apparent under the terms of Section 130.2000 which states that if no separately stated charge for photoprocessing is made then the Sales Tax Due under audit conditions could be 10%

of the lump sum price stated (In our examples above either \$23.00 or \$46.00) for a Professional Photographer.

We would prefer to get permission to use Invoice Example #1 for our clients use in the spirit of the De Minimis rules or secondarily Invoice Example #2 which would at least allow the client to promote to schools, family photo sittings, etc., with easy to use visual total price advertisements.

In either situation the taxpayer would not increase (or mark up) their cost of photoprocessing by third parties to themselves when charging the customer. They would simply pass on the same cost to the customer and pay the sales tax based on that photoprocessing costs.

We thank you for your attention and direction in this matter on behalf of our clients and ourselves.

Enclosed is a copy of 86 Ill. Adm. Code 130.2000 concerning Persons Engaged in the Printing, Graphic Arts or Related Occupations, and Their Suppliers. Photographers, film makers, and other servicemen are subject to Retailers' Occupation Tax on the photoprocessing component of their total service charge when they sell products of photoprocessing. The tax on the photoprocessing component will apply regardless of whether the photographer performs the photoprocessing in-house, or engages a third-party photoprocessor. If the photoprocessing is done in-house, the photoprocessing charge cannot be less than the photoprocessor's cost price. Such products of photoprocessing include prints, photographic reproductions, and microfilm.

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We cannot authorize use of your example invoice #1. Your contention that because the photoprocessing charges are de minimis your company should be able to post the statement "All Sales Tax is Included" makes an analogy to the sign procedure authorized by 86 Ill. Adm. Code 150.1305 and 150.1310. That analogy is misplaced because the sign procedure is only authorized when retailers' transactions are such that it is impracticable to issue invoices and the Department finds that it is not possible, under the facts of the case, for the retailer to collect the tax from the purchaser as a separate item from the selling price, 86 Ill. Adm. Code 130.1305(a). That is not the case with your transactions. Further, the regulation notes that the sign procedure "may not be relied on to prove collection of the tax by the retailer from his customers as a separate item in types of transactions in which such retailer does issue invoices or sales tickets to customers", 86 Ill. Adm. Code 150.1305(b).

Your taxpayer's invoice #2 has package prices stated alone and photoprocessing costs and sales tax amounts stated below the headline advertisement in small print. If this print is legible and

upon a customer's acceptance this offer to sell photos becomes the final invoice, then it would comply with the requirement for separately stating the charge for the photoprocessing component. If, however, a purchase order, bill of sale or final invoice is issued after the customer mails in their check, then tax would be imposed on 10% of the entire selling price, unless the charge for the photoprocessing component were separately stated on that subsequently issued document.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.